

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

ELVIN FERRERA HERNANDEZ,

Defendant.

CASE NO. 8:01CR169

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 52). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to the following paragraphs of the PSR: ¶¶ 19, 28 (acceptance of responsibility); ¶ 24 (lack of at least a minor role adjustment); and ¶ 21 (base offense level, contingent upon a mitigating role adjustment). The objections will be heard at sentencing, and the Defendant has the burden by a preponderance of the evidence.

IT IS ORDERED:

1. The Defendant's objections to ¶¶ 19, 28 (acceptance of responsibility); ¶ 24 (lack of at least a minor role adjustment); and ¶ 21 (base offense level, contingent upon a mitigating role adjustment) will be heard at sentencing;
2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are

required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

3. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final;

4. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and

5. The Defendant's motion for downward departure (Filing No. 78) will be heard at sentencing.

DATED this 30th day of July, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge